No. 92-1479

In The

Supreme Court of the United States

October Term, 1993

McDermott, Inc.,

Petitioner,

vs.

AmClyde, A Division of AMCA INTERNATIONAL, INC. and RIVER DON CASTINGS, LTD.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S ORIGINAL BRIEF ON THE MERITS

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QUESTION PRESENTED

Should this Court adopt a rule for maritime tort actions which permits a plaintiff who settles with some, but not all, defendants prior to judgment to receive more in satisfaction of his judgment against the non-settling defendant than the amount awarded by the jury; *or* should the Court adopt a rule which credits the non-settling defendant for the dollar amount of all previous settlements to insure the plaintiff only one satisfaction?

LIST OF PARTIES

Parties to the proceedings below were petitioner, McDermott, Inc., respondent, River Don Castings, Ltd., defendant AmClyde, a Division of AMCA International, Inc. (formerly "Clyde Iron"), and settling defendants British Ropes, Ltd., International Southwest Slings, Inc., and Hendrik Veder, B.V.

RULE 29.1 LIST

The parent corporation of River Don Castings, Ltd. is Sheffield Steel, Ltd., a corporation of the United Kingdom.

There are no subsidiary companies.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

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STATEMENT OF THE CASE

Petitioner instituted this civil action against AmClyde, the designer and manufacturer of a 5,000 ton "Shearleg" crane; River Don, the subcontractor that manufactured the crane's hook; British Ropes and Hendrick Veder, manufacturers of the slings utilized in the lift; and International Southwest Slings, Inc., ("ISSI"), the supplier of the British Ropes sling, seeking recovery for damages to the crane and an oil and gas production platform (hereinafter "Snapper deck").

The basic facts leading up to the accident are undisputed. Petitioner purchased the 5,000 ton Shearleg crane for use in its marine construction business. After conducting several test lifts, McDermott loaded the crane onto a barge in order to utilize it offshore. On October 10, 1986, petitioner attempted to utilize the Shearleg crane to lift the Snapper deck and attach it to a structural steel base which had previously been set in the Gulf of Mexico off the coast of Texas. As the crane lifted the deck, one of the prongs of the crane's hook broke, and one of the slings that connected the deck to the hook unraveled at its "eye splice," causing the Snapper deck to drop back onto its transport barge and striking the boom of the Shearleg crane. Both the deck and the crane were damaged as a result of this incident.

After the accident, McDermott repaired the Snapper deck and the Shearleg crane. On October 13, 1986, McDermott made a call in warranty against AmClyde. A provision of the sales contract between McDermott and AmClyde set forth that McDermott's only remedy was the repair or replacement of parts found to be defective in material or workmanship. While contesting whether the hook was defective, AmClyde nonetheless provided a replacement hook.

On the morning of trial, McDermott announced to the court that it had reached a settlement of McDermott's claims against the manufacturers and supplier of the slings, the so-called "sling defendants." Counsel for petitioner announced the terms of the settlement as follows. " . . . McDermott will dismiss all claims with prejudice against the three sling defendants in exchange for the payment of $1,000,000. . . . " (J.A., p. 24.)

Thereafter, for tactical reasons, counsel for petitioner advised the court that McDermott would accept responsibility for any part the slings played in causing the accident. (J.A., pp. 25, 29.) Continuing with this tactical approach, counsel for McDermott told the jury in opening statement that McDermott would have to bear the responsibility for any part that the jury found the slings played in the casualty. (J.A., pp. 26, 27.)

Shortly after the settlement was announced, counsel for respondent advised the court that it would seek a dollar-for-dollar credit for the settlement made by the sling defendants pursuant to the existing precedent of the United States Fifth Circuit Court of Appeals in *Hernandez v. M/V RAJAAN*, 841 F.2d 582 (5th Cir.), *modified on other grounds*, 848 F.2d 498, *cert denied*, 488 U.S. 981, 109 S.Ct. 530, 102 L.Ed.2d 562 (1988).

Throughout the trial, respondent contended that the accident occurred solely as a result of the negligence of petitioner. Indeed, a review of the pre trial contentions of respondent in the pre trial order, (R. 285), and the opening statement and closing argument of counsel for respondent reveals that at no time did respondent contend that the sling defendants' negligence was a cause in fact of the accident. (J.A., pp. 34-36, R. 273, pp. 2855 *et seq.*) Most importantly, the jury was charged that the respondent and AmClyde contended only that *petitioner* was negligent in misusing the cable laid slings and overloading the hook. (J.A., p. 37.) No jury charge was given regarding the settling defendants' fault and no evidence of the sling defendants' negligence was ever offered by counsel for respondent at trial. Rather, counsel for

respondent repeatedly requested a dollar-for-dollar credit for the amount of the settlement of the sling defendants.

The jury returned a verdict finding AmClyde 32% at fault, River Don 38% at fault, and "McDermott/sling defendants" 30% at fault. The jury found McDermott's damages to be $2,100,000 and declined to award pre-judgment interest. Though the jury verdict form read "McDermott/sling defendants,"[1] the 30% assigned in that space could only have been for petitioner's negligence, because the only evidence presented to the jury by respondent was the fault of McDermott, and the jury was not charged to consider the sling defendants' fault.

Thereafter, the trial court reduced the judgment by McDermott's 30% fault for misusing the right hand and left hand cable laid slings, resulting in the recoverable amount for petitioner of $1,470,000. The trial court initially withheld entering judgment to consider respondent's request for a dollar-for-dollar credit for petitioner's settlement with the sling defendants. Thereafter, the trial court entered judgment denying respondent's motion for a dollar-for-dollar credit, dividing damages in accordance with the jury's allocation of liability: $672,000 against AmClyde and $798,000 against River Don. After final judgment was entered, all parties filed timely notices of appeal to the United States Fifth Circuit Court of Appeals.

[1] McDermott did not object to the trial court's verdict form.

On appeal, the Fifth Circuit upheld the allocation of 30% negligence to McDermott.[2] The Court also found that the remedies contained in the contract between AmClyde and McDermott were valid and enforceable, and reversed the judgment against AmClyde. The Fifth Circuit also affirmed the trial court's finding of 38% fault on River Don and granted respondent's request for a dollar-for-dollar credit for the dollar amount McDermott had received from the sling defendants. Accordingly, judgment was entered against River Don for $470,000, the full amount remaining to be paid to fully satisfy McDermott's judgment for its damages.

McDermott's Petition for Rehearing and Rehearing *En Banc* were denied by the United States Fifth Circuit Court of Appeals. Petitioner then petitioned this Court to review the Fifth Circuit's ruling on several issues. On June 28, 1993, this Court granted a Writ of Certiorari limited to the question of whether the United States Fifth Circuit Court of Appeals correctly applied a dollar-for-dollar credit in entering judgment against respondent.

SUMMARY OF THE ARGUMENT

A. Neither the *pro rata* nor the *pro tanto* method of crediting a non-settling defendant for a previous settlement is without flaw. When a plaintiff settles with one of several defendants, the non-settling defendant is entitled to a credit for that settlement, because plaintiff has been

[2] This finding has not been appealed to this Court by petitioner.

partially compensated for his damages. Respondent suggests that the dollar-for-dollar or *pro tanto* credit method adopted by the Fifth and Eleventh Circuits is the preferable method, because a plaintiff receives in satisfaction of his judgment no more and no less than the amount determined by the trier of fact to be his damages.

While principles of joint liability insure that a plaintiff recovers the full amount of his damages, the logical and widely accepted corollary is that a plaintiff is only entitled to one satisfaction of his damages. Any rule of law which allows a plaintiff to recover more than his just compensation is contrary to justice and undermines the purpose of an action in tort. To allow a plaintiff to profit from litigation, such as would occur under petitioner's proposed method of reduction for the sling defendants' settlement, is repugnant to fundamental fairness and promotes vexatious litigation rather than judicial economy.

The *pro tanto* method of reduction is the most universally accepted method of crediting a defendant for another defendant's settlement. Thirty-four of the fifty states of the United States provide for the reduction of a plaintiff's award by the dollar amount of any settlement with a joint tort-feasor. The courts of the United Kingdom also follow the *pro tanto* method of reduction when settlements with less than all joint tort-feasors are involved. The principle underlying the rule is the same as in the courts of the United States: "in every tort, there is only one damage."

One of the fundamental differences between the *pro tanto* and *pro rata* methods is in the allocation of the risk of an insufficient settlement. By placing the risk of an

insufficient settlement on the tort-feasor and insuring that a plaintiff receives full recovery of his judicially determined damages, the *pro tanto* method encourages settlement.

Under the *pro rata* method, a settling plaintiff faces two critical uncertainties which create a disincentive to settlement. First, settlement with one defendant could leave him unable to collect the balance of the total assessed damages from the remaining defendants. Second, the full effect of settlement cannot be known until the trier of fact determines the settling party's relative fault. Moreover, under the *pro rata* method, after a settlement with one defendant, the posture of the case changes dramatically, often on the eve of trial. Because of the settlement, the non-settling defendant is in the position of having to bear the burden of proving the fault of the settling defendant. The plaintiff is put in the awkward position of having to defend the actions of a party he once blamed, the now unrepresented settling defendant. The trial is thus prolonged and complicated by litigating the fault of the absent, unrepresented party.

The alleged opportunity for collusion under the *pro tanto* method referred to by petitioners and Amici is alleviated by the requirement that any settlement agreement be made in good faith. Good faith inquiries can be and have been conducted quite expeditiously. A full evidentiary hearing or "mini-trial" regarding the good faith of a settlement is not a necessary corollary to the *pro tanto* method.

B. Respondent suggests that many of the difficulties presented by both approaches could be obviated by this

Court fashioning a rule to be applied in maritime tort cases whereby the non-settling defendant has the option to choose the method of reduction. Under respondent's alternative proposal, a non-settling defendant would designate either the *pro rata* or the *pro tanto* method of reduction for any previous settlements by plaintiff. Allowing the non-settling defendant to choose the credit method is justified, because he is not a party to the settlement, and it should not operate to his detriment. Moreover, because the settling parties would not know which method will be chosen, collusion between the settling parties would be discouraged.

ARGUMENT

I. WHEN THE PLAINTIFF IN A MARITIME TORT ACTION SETTLES WITH SOME, BUT NOT ALL, DEFENDANTS PRIOR TO JUDGMENT, HIS AWARD AGAINST THE NON-SETTLING DEFENDANT SHOULD BE REDUCED *PRO TANTO* SO THAT HE RECEIVES FULL SATISFACTION OF HIS JUDICIALLY DETERMINED DAMAGES.

Neither the *pro rata* nor the *pro tanto* method of crediting a non-settling defendant for a previous settlement is without flaw.[3] The American Law Institute has refused to recommend one approach over the other.[4]

[3] *See* Restatement (Second) of Torts §886A (1977), Contribution Among Tort-feasors, comment m (1965) ("Each [method] has its drawbacks and no one is satisfactory.")

[4] Restatement (Second) of Torts §886A (1977), comment m(3) states: "The institute leaves these issues to a caveat and takes no position."

All parties and Amici agree that when a plaintiff settles with one of several defendants, the non-settling defendant is entitled to a credit for that settlement, because plaintiff has been partially compensated for his damages. Petitioner and Amici suggest that this Court adopt the *pro rata* or proportional fault credit method under which a plaintiff may receive in satisfaction substantially more (or less) than the jury's award. Respondent suggests that the dollar-for-dollar or *pro tanto* credit method adopted by the Fifth and Eleventh Circuits is the preferable method, because a plaintiff receives in satisfaction of his judgment no more and no less than the amount determined by the trier of fact to be his damages.

A. Petitioner Is Entitled To Only One Satisfaction Of Its Damages

Long before this Court's adoption of comparative fault in maritime collision cases in *United States v. Reliable Transfer*, 421 U.S. 397, 95 S.Ct. 708, 44 L.Ed.2d 251 (1975), the general maritime law recognized the concept of joint liability. In *The Atlas*, 93 U.S. 302, 23 L.Ed. 863 (1876), this Court held that the insurer of cargo lost in a collision between two vessels caused by the fault of both could recover all of its damages from one vessel. The court looked to the common law in recognizing a plaintiff's right "to sue . . . all the wrongdoers or any one of them at his election; and it is equally clear, that, if he did not contribute to the disaster, he is entitled to judgment in either case for the full amount of his loss." *The Atlas*, 93 U.S. 302, 23 L.Ed. 863 (1876); *see also The Alabama*, 92 U.S. 695, 23 L.Ed. 763 (1876).

While principles of joint liability insure that a plaintiff recovers the full amount of his damages, the logical and widely accepted corollary is that a plaintiff is only entitled to one satisfaction of his damages.[5] A plaintiff should not receive, for the same wrong, remuneration in excess of his actual damages.

In civil actions, this fundamental principle is one of just compensation for the loss sustained so that the injured party may be made whole or restored as nearly as possible to the position he was in prior to the injury. 25 C.J.S. Damages §3 (1966), p. 626. However, the person who has sustained loss is not entitled to be made more than whole, recover an amount in excess of the damages

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[5] Harris, *Washington's Unique Approach to Partial Tort Settlements: The Modified Pro Tanto Credit and the Reasonableness Hearing Requirement*, 20 Gonz. L. Rev. 69, 84, n.46 (1984-85); *Kassman v. American Univ.*, 546 F.2d 1029, 1033 (D.C. Cir. 1976) ("cardinal principle of law" that claimant can recover no more than loss actually suffered); *Rose v. Associated Anesthesiologists*, 501 F.2d 806, 809 (D.C. Cir. 1974) (one satisfaction rule is "equitable in its nature, and its purpose is to prevent unjust enrichment"); *Screen Gems-Columbia Music, Inc. v. Matlis & Lebow Corp.*, 453 F.2d 552, 554 (2d Cir. 1972) ("under elementary principles of tort law a plaintiff is entitled to only one recovery for a wrong"); *Layne v. United States*, 460 F.2d 409, 411 (9th Cir. 1972) ("sound public policy of permitting a plaintiff to receive only the amount of his adjudged damages and no more"); *Carr v. Cove*, 33 Cal. App. 3d 851, 854, 109 Cal. Rptr. 449, 451 (1973) ("general theory of compensatory damages bars double recovery for the same wrong"); *American Home Assurance Co. v. Vaughn*, 21 Ariz. App. 190, 517 P.2d 1083, 1085-86 (1974) ("Once a party is made whole, the "law has served its purpose"); *Popovich v. Ram Pipe & Supply Co. Inc.*, 82 Ill. 2d 203, 412 N.E.2d 518, 521 (1980) (condemning double recovery); *Consolidated Rail Corp. v. Travelers Ins. Co.*, 466 N.E.2d 709, 712 (Ind. 1984) ("Elementary principle of tort law").

sustained, make a profit, or be put in a better condition than he would be had the wrong not occurred. *Id.* at 627-28, 22 Am. Jur. 2d Damages §27 (1988), pp. 54-56. Stated differently, the purpose of allowing an action in tort is to afford compensation, rather than enrichment. *Atlantic Coast Line R. Co. v. Ouzts*, 82 Ga. App. 36, 60 S.E. 2d 770 (1950); *see also Donaldson v. Carmichael*, 102 Ga. 40, 29 S.E. 135 (1897).[6]

Any rule of law which allows a plaintiff to recover more than his just compensation is contrary to justice and undermines the purpose of an action in tort. To allow a plaintiff to profit from litigation, such as would occur under McDermott's proposed method of reduction for the sling defendants' settlement, is repugnant to fundamental fairness and promotes vexatious litigation rather than judicial economy.

Only the *pro tanto* method of credit insures adherence to the one satisfaction rule. Prior to *Reliable Transfer*, courts followed a rule in which damages cast against a tort-feasor would be reduced by the amount paid in settlement by other joint tort-feasors. In *Billiot v. Seawart Seacraft, Inc.*, 382 F.2d 662, 664 (5th Cir. 1967), the United States Fifth Circuit adopted the dollar-for-dollar credit for

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[6] "The universal and cardinal principal is that the person injured shall receive a compensation commensurate with his loss or injury, and no more. 1 Suth. Dam. p. 27. . . . The plaintiff is entitled to only one satisfaction, and, if the manner of releasing one involves satisfaction in whole or in part of the claim, it will inure to the discharge pro tanto of all who are liable. *Lord v. Tiffany*, 98 N.Y. 412 [1885]; *Kasson v. People*, 44 Barb. 347 [N.Y. 1864]; *Ellis v. [Essau]*, 50 Wis. 138, 6 N.W. 518 [1880]." *Donaldson*, 29 S.E. at 136-137.

cases where a plaintiff settles with one defendant and subsequently litigates his damages against another defendant. The Fifth Circuit set forth the policy reasons behind this rule by stating, "A double recovery may be prevented by deducting the amount of the settlement payment from the total damages. Judgment may then be awarded to appellant for the balance. This procedure should fully compensate the appellant **while not providing her with unjust enrichment**." *Id.* at 664 (Emphasis added.) *See also Loffland Brothers Co. v. Huckabee*, 373 F.2d 528 (5th Cir. 1967).

However, with *Leger v. Drilling Well Control, Inc.*, 592 F.2d 1246 (5th Cir. 1979), the Fifth Circuit Court erroneously went beyond its established precedent and reduced a plaintiff's award against a non-settling defendant, not by the dollar amount of a previous settlement, but by "the dollar amount represented by the proportion of negligence, if any, attributed to the settling parties." *Leger*, 592 F.2d at 1248. The *Leger* Court reasoned that any other method of crediting the non-settling tort-feasor for the settlement would be tantamount to "rejecting the *Reliable Transfer* reasoning." *Id.* at 1249.

Two months after the *Leger* decision, this Court decided *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 99 S.Ct. 2753, 61 L.Ed.2d 521 (1979), which reaffirmed the principles of joint liability and a plaintiff's corresponding right to recover from any tort-feasor the full compensation for damages incurred. The court stated:

> Nothing is more clear than the right of a plaintiff, having suffered such a loss, to sue in a common-law action all the wrong-doers, or any one of them, at his election; and it is equally clear that if he did not contribute to the disaster, he is entitled to judgment in either case for the full amount of his loss.

Edmonds, 443 U.S. at 260, n.7; *quoting The Atlas*, 93 U.S. 302, 23 L.Ed. 863 (1876).

The *Edmonds* court recognized that *Reliable Transfer* merely changed the method of apportionment of damages from equal division to division based on comparative fault. *Edmonds*, 443 U.S. at 271, n.30. The court specifically stated, "But we did not upset the rule that the plaintiff may recover from *one* of the colliding vessels the damage concurrently caused by the negligence of both." *Id.* (Emphasis in original).

Recognizing this Court's reaffirming of the principles of joint liability in *Edmonds*, the Eleventh Circuit in *Self v. Great Lakes Dredge & Dry Dock Co.*, 832 F.2d 1540 (11th Cir. 1987), *cert. denied*, 486 U.S. 1033, 108 S.Ct. 2017, 100 L.Ed.2d 604 (1988), declined to follow *Leger* and held that a plaintiff's recovery against a non-settling tort-feasor must be reduced by the dollar amount of the settlement with a joint tort-feasor, resulting in the plaintiff receiving the exact amount of his damages. *Self*, 832 F.2d at 1548. *See also Hernandez*, 841 F.2d at 591; *Constructores Tecnicos v. Sea Land Service*, 945 F.2d 841 (5th Cir. 1991); *Cf. Joia v. Jo-Jo Service Corp.*, 817 F.2d 908 (1st Cir. 1987), *cert. denied*, 484 U.S. 1008, 108 S.Ct. 703, 98 L.Ed.2d 654 (1988); and *In the Matter of Oil Spill by the Amoco Cadiz*, 954 F.2d 1279 (7th Cir. 1992). Both *Joia* and *Amoco Cadiz* recognized *Edmonds'* re-affirmance of joint liability in the admiralty context even beyond cases governed by the Longshore and Harbor Workers' Compensation Act. These Circuits'

recognition of the importance of applying *Edmonds* indicates their preference for the *pro tanto* method.

B. The *Pro Tanto* Method of Reduction Is The Most Universally Accepted.

Not only have several of the Federal Courts of Appeal which have considered the issue chosen the *pro tanto* method of credit as the preferred methodology, but the *pro tanto* method of reduction is the most universally accepted method of crediting a defendant for another defendant's settlement. Thirty-four of the fifty states of the United States provide for the reduction of a plaintiff's award by the dollar amount of any settlement with a joint tort-feasor.[7] Moreover, the American Law Institute's Restatement (Second) of Torts calls for a dollar-for-dollar reduction of plaintiff's award if there has been payment by less than all joint tort-feasors.[8] Federal courts have

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[7] See Brief for the United States as Amicus Curiae Supporting Petitioner, pp. 14-15, n.8. As discussed, *infra*, Texas law allows non-settling tort-feasor to select the method of reduction prior to trial. Tex. Rev. Civ. Stat. Ann. Title 2 §33.012, .014. New York law requires the reduction of a plaintiff's award by the dollar amount of settlement or the settling tort-feasor's proportion of liability, whichever is greater. N.Y. Gen. Oblig. Law §15-108.

[8] Restatement (Second) of Torts §885(3) (1977) is as follows:

> A payment by any person made in compensation of a claim for a harm for which others are liable as tortfeasors diminishes the claim against the tortfeasors, at least to the extent of the payment made, whether or not the person making the payment is liable to the injured person and whether or not it is so agreed at the time of payment or the payment is made before or after judgment.

also adopted the dollar-for-dollar credit methodology in securities cases,[9] and the *pro tanto* method has been applied over the *pro rata* method in civil rights litigation[10] and in Title VII actions.[11]

The courts of the United Kingdom also follow the *pro tanto* method of reduction when settlements with less than all joint tort-feasors are involved.[12] The principle underlying the rule is the same as in the courts of the United States: "in every tort, there is only one damage."[13]

The rationale behind the adoption of the *pro tanto* method of reduction is to provide full satisfaction while not unjustly enriching the plaintiff. *See Billiot, supra.* This rationale was also behind the court's reasoning in *Hernandez*, 841 F.2d at 591, and in *Self*, 832 F.2d at 1548, n.6. Several states have also observed that the policy against

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[9] *See Singer v. Olympia Brewing Co.*, 878 F.2d 596 (2d Cir. 1989); *TGB, Inc. v. Bendis*, 811 F.Supp. 596 (D. Kan. 1992); *Federal Savings & Loan Insurance Corp. v. McGinnis, Juban, Bevan, et al.*, 808 F.Supp. 1263 (E.D. La. 1992); *Federal Deposit Insurance Corp. v. Geldermann, Inc.*, 763 F.Supp. 524 (W.D. Okla. 1990), *rev'd on other grounds*, 975 F.2d 695 (10th Cir. 1992).

[10] *See Miller v. Apartments & Homes of N.J., Inc.*, 646 F.2d 101 (3d Cir. 1991).

[11] *See Sears v. Atchison, Topeka & Santa Fe Ry.*, 749 F.2d 1451 (10th Cir. 1984), *cert. denied sub nom., United Transp. Union v. Sears*, 471 U.S. 1099, 105 S.Ct. 2322, 85 L.Ed.2d 840 (1985).

[12] *See Bryanston Finance Ltd. v. de Vries*, (1975) 1 QB 703 (espousing the rule that a plaintiff may enforce a judgment for the excess over that which he has already recovered and holding that a plaintiff who settled with one or several defendants for £1000 could recover no more from other defendants, as the damages were assessed at only £500.)

[13] *Bryanston Finance Ltd.*, (1975) 1 QB at 722.

double recovery supports application of the *pro tanto* method of reduction rather than the *pro rata* method.[14] As one court observed, "The principle behind this [*pro tanto*] credit is that **the injured party is entitled to only one satisfaction for a single injury** and the payment by one joint tortfeasor inures to the benefit of all." *Sanders*, 489 N.E.2d at 120 (Citations omitted, emphasis added).

C. The *Pro Tanto* Method is Consistent With Principles of Both Comparative Fault and Joint Liability.

By affirming the Fifth Circuit's decision herein, this Court would be establishing a bright line rule which recognizes that, as to parties actually before the Court and jury, principles of comparative fault apply, but they do not operate to abrogate the principles of joint liability and a plaintiff's corresponding right to recover the full amount of damages from the parties before the Court. The adoption of the *pro tanto* method of reduction would firmly establish that, under the general maritime law of the United States, a plaintiff is entitled to recover the amount of damages determined by the jury – no more and no less.

The Fifth Circuit applied principles of comparative fault by affirming the district court's apportionment of

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[14] *See, e.g., Boyken v. Steele*, 847 P.2d 282 (Mont. 1993); *Walihan v. St. Louis-Clayton Orthopedic Group, Inc.*, 849 S.W.2d 177 (Mo. App. E.D. 1993); *Sanders v. Cole Municipal Finance*, 489 N.E.2d 117 (Ind. App. 3 Dist. 1986); *Martinez v. Lopez*, 300 Md. 91, 476 A.2d 197 (1984); *Popovich*, footnote 5, *supra*, 412 N.E.2d at 521; *Santiago v. Santiago*, 121 R.I. 88, 402 A.2d 1189 (1979).

fault among plaintiff and non-settling defendants, AmClyde and River Don, but the Court also insured that McDermott received full satisfaction for the amount of damages to which the jury found it was entitled by reducing plaintiff's award (after adjustment for petitioner's comparative negligence) by the dollar amount of the settlement reached with settling sling defendants. The Fifth Circuit, therefore, remained true to the principles set forth in this Court's rulings in *Reliable Transfer* and *Edmonds*. McDermott now cries foul, apparently because it was not able to obtain a "double recovery" which would occur under the *pro rata* reduction method advocated by McDermott.

Contrary to the *Leger* Court's analysis, application of a *pro tanto* reduction of a plaintiff's award is not a rejection of *Reliable Transfer*. In fact, the Fifth and Eleventh Circuit Courts of Appeals applying the *pro tanto* method have also applied principles of comparative fault in both personal injury and collision cases.[15]

The *pro tanto* method of reduction of a damage award is the only method which allows for application of principles of comparative fault without rejecting the principles of joint liability. A plaintiff is free to seek full recovery for his damages by pursuing an action against any of the joint tort-feasors and will recover the amount of damages determined by the jury, but principles of comparative fault apply to parties participating at trial. If the plaintiff

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[15] *See, e.g., Constructores Tecnicos*, 945 F.2d at 850; *Drake Towing Co., Inc. v. Meisner Marine Constr. Co.*, 765 F.2d 1060 (11th Cir. 1985).

settles with one or more of the joint tort-feasors, principles of joint liability are not abrogated. Neither are principles of comparative fault. The jury determines the degrees of fault, if any, of the parties before it and the amount of damages suffered. The plaintiff is entitled to recover that amount less the dollar amount represented by his own comparative negligence and less the dollar amount of the settlement. The plaintiff, therefore, receives the exact amount of damages to which the jury has found him entitled and the non-settling defendants participating at trial contribute to the damages according to their judicially determined degrees of fault.

The decision of the Fifth Circuit below and its prior decision in *Hernandez, supra*, adheres to the rule that plaintiffs are only entitled to one recovery for the damages suffered. *See McDermott, Inc. v. Clyde Iron, et al.*, 979 F.2d 1068, 1079 (5th Cir. 1992); *Hernandez*, 841 F.2d at 591. A plaintiff can expect and demand nothing more. Application of the *pro tanto* method of reduction insures that the plaintiff receives nothing more than what the jury has determined are its damages. The comparative fault principles espoused by *Reliable Transfer* are not abrogated, but rather followed, in determining the percentages of fault of the parties before the Court who remain liable for the remainder of plaintiff's damages not satisfied through settlement according to their degrees of fault.

D. The *Pro Tanto* Method of Reduction Promotes Settlement, Judicial Economy and Fairness.

One of the fundamental differences between the *pro tanto* and *pro rata* methods is in the allocation of risk of an

insufficient settlement. By insuring that the plaintiff receives one satisfaction for his damages, the *pro tanto* method places the risk of the plaintiff entering into an insufficient settlement on the non-settling tort-feasor. Conversely, the *pro rata* method places the risk of an insufficient settlement on the plaintiff.[16] Courts which have analyzed this consideration have stated that, in order to be consistent with the principles of joint liability which facilitates full compensation of an injured plaintiff, this risk is more properly placed on the tort-feasor.[17]

By placing the risk of an insufficient settlement on the tort-feasor and insuring that a plaintiff receives full recovery of his judicially determined damages, the *pro tanto* method encourages settlement.

Under the *pro rata* method, a settling plaintiff faces two critical uncertainties which create a disincentive to settlement. First, settlement with one defendant could leave him unable to collect the balance of the total assessed damages from the remaining defendants. Second, the full effect of settlement cannot be known until the trier of fact determines the settling party's relative

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[16] *See, e.g., Bass v. Phoenix Seadrill/78, Ltd.*, 749 F.2d 1154 (5th Cir. 1985) (following *Leger*; the Court awarded the plaintiff $390,000 from non-settling defendants which, when combined with the "Mary Carter" settlement (see footnote 22, *infra.*) from the settling defendant, amounted to $422,000 out of a $650,000 jury award); *Kizer v. Peter Kiewit Sons' Co.*, 489 F.Supp. 835 (N.D. Cal. 1980) (plaintiff received $117,898 in settlement and judgment, even though the jury awarded $233,694, because the *pro rata* method was used.)

[17] *See Geldermann*, 763 F.Supp. at 531 (The risk of settlement "should more rightly be allocated to joint tortfeasors.")

fault. Therefore, a plaintiff must prosecute his case in the shadow of a phantom defendant who is unrepresented at trial, but is assessed a degree of fault. The settling defendants' fault inures to the detriment of the plaintiff when that fault is assessed at a percentage that translates into a dollar amount in excess of the settlement amount.

On the other hand, the *pro tanto* credit allows the plaintiff to actually determine the effect of his settlement. When utilizing a dollar-for-dollar credit, a plaintiff recovers the remainder of his full damages from the non-settling defendant. He is, therefore, more likely to settle with a tort-feasor who may only be marginally liable. For example, under the *pro rata* method, if a plaintiff settles with a relatively impecunious defendant for $15,000 and proceeds to trial against a non-settling defendant who is ultimately assessed 90% of the fault on a total damage award of $500,000, with the remaining 10% being assessed to the settling party, plaintiff will only collect $465,000 total, even though the jury found he was entitled to $500,000. Under the *pro tanto* method, however, if a plaintiff enters a cost-of-defense type settlement with one defendant, he will not thereafter be barred from recovering the remainder of his full damages from the remaining defendant.

The *pro tanto* method also promotes settlement with defendants which have limited assets or insurance coverage, because the plaintiff may recover his full damages from the non-settling tort-feasor. Conversely, under petitioner's proposed method, the plaintiff has little incentive to settle for the insurance policy limits of a defendant, because he runs the risk that the settling defendant will

be found liable for a large percentage of fault. The plaintiff is better off keeping the would-be settling defendant in the litigation so that he may recover all of his damages, regardless of the allocation of fault, from the "wealthier" defendant under principles of joint liability. The litigation is thus unnecessarily prolonged and complicated.

Moreover, under the *pro rata* method, after a settlement with one defendant, the posture of the case changes dramatically, often on the eve of trial. Because of the settlement, the non-settling defendant is in the position of having to bear the burden of proving the fault of the settling defendant. Witnesses not in the defendant's control must be located, and trial strategies must be revised, all at great expense to the parties and to judicial economy. The plaintiff is put in the awkward position of having to defend the actions of a party he once blamed, the now unrepresented settling defendant. The trial is thus prolonged and complicated by litigating the fault of the absent, unrepresented party. In multi-party litigation, the burden on the jury's time and perception is already considerable. To add to this burden by asking the jury to consider evidence of the fault of unrepresented, absent parties and to allocate fault between those absent parties and the litigating parties is to negate the advantages of partial settlement, i.e., simplification of the litigation and conservation of judicial resources.

Conversely, the *pro tanto* method promotes judicial economy. The amount of reduction of a plaintiff's ultimate award is known from the moment of settlement, and litigation is simplified by making consideration of the unrepresented settling defendant's fault unnecessary. Indeed, in the instant litigation, the trial would have

conceivably lasted one week longer had respondent sought to introduce evidence of the sling defendants' fault rather than relying on the dollar-for-dollar credit.

Petitioner and Amici submit that fairness requires adoption of the *pro rata* method of reduction. Respondent submits, however, that the *pro tanto* method is no more unfair than the *pro rata* method. Adoption of the *pro rata* method in this case, as well as its application in past cases, would result in a patently *unfair* windfall to the plaintiff. Moreover, the contention that a plaintiff should not be able to recover from the non-settling defendant the full amount of his damages when he has made a "bad settlement" is nothing more than an attack on the inequities of joint and several liability, which is well established in the common law and maritime law. Many instances exist outside of the context of settlement credits where one of several tort-feasors bears a greater burden of damages, either because no right of contribution exists against the other tort-feasors or they are statutorily immune, insolvent, or unable to be found. As observed by the court in *In the Matter of Oil Spill by the Amoco Cadiz*, 954 F.2d 1279 (7th Cir. 1992), the *Edmonds* decision, although based in part on an interpretation of the Longshore & Harbor Workers' Compensation Act, also considered whether reduction of the claimant's damages by the amount of fault attributable to his employer would be wise. As noted by the *Amoco Cadiz* court, the *Edmonds* court concluded that claim reduction would be unwise, because it would complicate litigation and reduce the injured person's recovery. *Amoco Cadiz*, 954 F.2d at 1316, *citing Edmonds*, 443 U.S. at 268-273. The *Amoco Cadiz* court noted:

> The [Edmonds] court acknowledged the inequity of requiring a person 20% at fault to pay 90% of the damages but observed that such disproportion has been tolerated since the creation of the rule of joint and several liability. Attempts to redress this inequity create problems of their own, including failure to compensate the victim if one of the responsible parties cannot (or as in *Edmonds* need not) pay.

Amoco Cadiz, 954 F.2d at 1316-17. Moreover, while petitioner and Amici argue that the *pro tanto* method does not allow parties to bear the benefit or burden of their settlement, the *Self* court recognized that the *pro tanto* method results in the claimant receiving the exact amount of his damages, and "[t]he risk or wisdom of settling in contrast to going to trial falls upon whichever tortfeasor had the best foresight." *Self*, 832 F.2d at 1548, n.6.

The alleged opportunity for collusion under the *pro tanto* method referred to by petitioners and Amici is alleviated by the requirement that any settlement agreement be made in good faith. Contrary to petitioner's representations, the opportunity for a non-settling defendant to question the good faith of a plaintiff's settlement is not a fatal aspect of the *pro tanto* method. Good faith inquiries can be and have been conducted quite expeditiously.[18] If a non-settling defendant, after reasonable investigation, believes that a settlement was not entered into in good faith, he can request that the court review the documentary evidence of record to make its determination. A full evidentiary hearing or "mini-trial"

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[18] *See, TGB, Inc.*, 811 F.Supp. at 605; *Geldermann*, 763 F.Supp. at 531.

regarding the good faith of a settlement is not a necessary corollary to the *pro tanto* method.[19]

II. THE *LEGER*-TYPE *PRO RATA* METHOD IS FLAWED.

A. Reduction of a Plaintiff's Award Based on Allocation of Fault Among Litigating and Absent Parties Results in Either a Double or an Insufficient Recovery and Unnecessary Complication of Litigation.

Petitioner and Amici advocate the application of the minority approach: a *pro rata* reduction so that the dollar amount corresponding to the percentage of fault attributable to a settling defendant is reduced from the award, rather than deducting the actual dollar amount of the settlement. This argument is based on *Leger, supra*, and cases subsequent to it adopting similar *pro rata* or proportionate credit methods. The rationale of *Leger* is hopelessly flawed, however, and should not form the basis for a uniform general maritime rule. The facts of *Leger* illustrate some of these flaws.

In *Leger*, the jury only awarded $284,090, but the plaintiff received $310,171.55, because the *pro rata* method was used.[20] In crediting the non-settling defendant for

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[19] *See, Geldermann*, 763 F.Supp. at 531.

[20] In *Leger*, the plaintiff sued several defendants for personal injuries under the general maritime law and the Jones Act. On the morning of trial, Leger settled his claims against two defendants for $182,331.05. At trial the jury awarded Leger $284,090. Because the settlement contained a "Mary Carter" provision whereby Leger would pay one-half of any funds collected by him from the non-settling defendant back to the settling defendants, it should have been revealed to the jury so that it could have appropriately considered the potential bias of non-settling defendants' employee witnesses. The district court ordered a new trial to determine the parties' negligence. At the second trial, the jury found the non-settling defendant 45% negligent, Leger 35% negligent and one settling defendant 20% negligent. The district court entered judgment against the non-settling defendant for $127,840, the amount equal to its percentage of fault multiplied by the total amount of damages determined at the original trial. In other words, the jury's award was reduced by the amount represented by the plaintiff's proportionate share of negligence as well as the settling defendant's proportionate share of negligence.

the previous settlement, the district court applied several rules to determine the reduction of plaintiff's award. Specifically, the district court held, *inter alia*:

> (4) When two or more parties have contributed by their fault to cause injury to another, the liability for such damage is to be allocated among the parties proportionately to the comparative degree of fault.
>
> (5) A tortfeasor seeking to assert a reduction by the degree of fault of alleged joint tortfeasors must prove by a preponderance of the evidence that the settling defendant was, in fact, at fault.
>
> (6) A settling party's negligence is considered *only when he has been made a party to the suit*. In such a case, the judgment awarded to the claimant against the non-settling defendant is credited with the dollar amount represented by the proportion of negligence, if any, attributed to the settling parties.

Leger v. Drilling Well Control, Inc., 69 F.R.D. 358, 362-63 (W.D. La. 1976), *aff'd* 592 F.2d 1246 (5th Cir. 1979); *Leger*, 592 F.2d at 1248. (Footnotes omitted, emphasis added).

In support of these "rules," both the district court and the Fifth Circuit, which adopted the district court's language, cite *Reliable Transfer, supra*. While noting that *Billiot, supra, Loffland Brothers Co., supra,* provided that non-settling defendants were to be credited with the dollar amount of a previous settlement in order to avoid double recovery by the plaintiff, the Fifth Circuit stated:

> In our view, the *Leger* rules accommodate the interest of fairness and deterrence without sacrificing the policy against double recovery upon which *Billiot* and *Loffland* were founded.

Leger, 592 F.2d at 1249. (Footnote omitted).

The *Leger* rules' "preservation" of the policy against double recovery, however, is a fiction. After receiving significantly more than the jury determined Leger was entitled to, the Fifth Circuit stated, "Leger did not receive a double recovery for his injuries." *Id.* at 1250. The court went on to observe:

> Although Leger nominally received $310,171.05 by virtue of the settlement and the judgment, we do not consider this a double recovery. Leger merely obtained a favorable settlement.

Id. In a footnote, the Fifth Circuit admitted that:

> [T]he condition vel non of double recovery depends on whether one totals the absolute dollar figures of recovery and matches the total against the total damages or whether one totals the percentages of fault and sees that the total does not exceed 100%.

Id. at 1250, n.10. Without citation to any authority whatsoever, the footnote simply concluded, "Considering the competing principles involved we choose the latter." *Id.*

Despite the rejection of the *Leger* approach and the return to the *pro tanto* method of reduction by several panels of the Fifth Circuit, including the Court of Appeals below, petitioner invites this Court to engage in the same sophistry used in *Leger* which has now been rejected. Although the plaintiff in *Leger* and other plaintiffs benefiting from the application of *Leger*'s rules may not have recovered 200% of the damages awarded, they have in fact received "double recoveries" by recovering more than the jury's award.

Additionally, as noted by the Fifth Circuit in *Leger*, the *pro rata* method of reduction could result in a plaintiff recovering much less than the amount the jury awarded. *Leger*, 592 F.2d at 1250. For instance, a plaintiff could settle with one tort-feasor for $50,000 and proceed to trial against a joint tort-feasor. If the jury determines that the settling tort-feasor is 90% at fault, the non-settling tort-feasor is 10% at fault and that total damages are $100,000, plaintiff will only recover $60,000. This result is directly contrary to the principle of joint liability whereby a plaintiff may recover the entire amount of his damages from any one joint tort-feasor. *See Edmonds, supra.*

B. The *Pro Rata* Method Invites Collusion.

Leger allows consideration of a settling party's negligence only if he has been made a party to the suit.[21] In practice, however, this is an open invitation to collusive settlements. Prior to instituting an action, a plaintiff could settle with one party against whom he has a potential claim, perhaps for a significant amount of money, and thereafter file suit only against a joint tort-feasor who may be only slightly at fault. Under the *Leger* rules, the plaintiff could recover from the non-settling tort-feasor, in addition to his pre-litigation settlement dollars, 100% of the damages determined by the trier of fact, thus resulting in a double recovery. Because most courts adopting a *pro rata* method of reduction also adopt a rule whereby claims for contribution against the settling party are barred, the non-settling tort-feasor will have no recourse against the settling tort-feasor.

Collusion is also possible after litigation is instituted against all parties. Because the *pro rata* method requires consideration of the non-settling defendant's fault, evidence of that fault will be presented at trial, but the non-settling defendant will be unrepresented. Typically, a plaintiff has an incentive to offer the defendant of his choice an opportunity to settle in exchange for "cooperation" in establishing the other defendants' liability and in minimizing the plaintiff's and the settling defendant's liability. The result is that one of the litigating parties has a distinct advantage over the other by having access to information, documents and witnesses of one or more of

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[21] *Leger*, 592 F.2d at 1248.

the potentially culpable parties. If the settling defendant and plaintiff enter into a "Mary Carter"[22] type of settlement, under which the settling defendant is refunded a portion of the plaintiff's recovery from remaining defendants, the incentive for collusion between the plaintiff and the settling defendant is even greater, because the settling tort-feasor has an additional financial motive to make witnesses unavailable and for its employees to place as much blame on the non-settling defendants as possible.

At the same time, the non-settling defendants also have an incentive to ban together against the plaintiff by agreeing to place all of the blame on the settling defendant. In either event, the result is the presentation of a distorted picture of the truth to the jury.

III. ALTERNATIVELY, THIS COURT SHOULD FASHION MARITIME LAW TO ALLOW A NON-SETTLING DEFENDANT TO CHOOSE THE METHOD OF REDUCTION, BECAUSE IT PROMOTES FAIRNESS AND DISCOURAGES COLLUSIVE SETTLEMENTS.

As previously noted, neither the *pro rata* nor the *pro tanto* method of crediting a non-settling defendant for a previous settlement is without flaw.[23] The American Law

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[22] The term is derived from the agreement in *Booth v. Mary Carter Paint*, 202 So.2d 8 (Fla.App.1967); *see also* discussion of the agreement in *Leger*, at n.17, *supra*; *Bass*, 749 F.2d at 1156, n.2.

[23] *See* Restatement (Second) of Torts §886A, Contribution Among Tort-feasors, comment m (1965) ("Each [method] has its drawbacks and no one is satisfactory.")

Institute has refused to recommend one approach over the other.[24]

Respondent suggests that many of the difficulties presented by both approaches could be obviated by this Court fashioning a rule to be applied in maritime tort cases whereby the non-settling defendant has the option to choose the method of reduction. Under respondent's alternative proposal, a non-settling defendant would designate either the *pro rata* or the *pro tanto* method of reduction for any previous settlements by plaintiff. Support for the proposal is found in legislation passed by the States of Texas and New York.

The State of Texas[25] provides a statutory scheme whereby the non-settling defendant may elect, prior to

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[24] Restatement (Second) of Torts §886A, comment m(3) states: "The Institute leaves these issues to a caveat and takes no position."

[25] Tex. Rev. Civ. Stat. Ann., Title 2 provides:

§33.012. Amount of Recovery

(a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a credit equal to one of the following, as elected in accordance with Section 33.014:

(1) The sum of the dollar amounts of all settlements; or

(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:

trial, which method of reduction will be employed: a dollar-for-dollar credit or a "sliding scale" percentage of damages credit.

A similar approach is the method adopted by the State of New York. Under that method, if there has been a settlement with less than all joint tort-feasors, the damages awarded to the plaintiff are reduced by the dollar amount representing the settling defendants' percentage

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(A) 5 percent of those damages up to $200,000;

(B) 10 percent of those damages from $200,001 to $400,000;

(C) 15 percent of those damages from $400,001 to $500,000.

(D) 20 percent of those damages greater than $500,000.

(c) The amount of damages recoverable by the claimant may only be reduced once by the credit provided in Subsection (b).

* * *

§33.014. Election of Credit for Settlements

(a)[1] If a claimant has settled with one or more persons, an election must be made as to which dollar credit is to be applied under Section 33.012(b). This election shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and, when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected Subdivision (2) of Section 33.012(b).

[1] So in enrolled bill. There is no (b).

Acts 1985, 69th Leg., ch. 959, §1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., ch. 2 §2.08, eff. Sept. 2, 1987.

of fault, or by the dollar amount of the settlement, whichever is greater.[26] The major purposes of the rule are to provide incentives for settlement between plaintiffs and defendants, while at the same time insuring that the non-settling defendant does not have to bear an inequitable share of liability, simply because other parties have chosen to settle. *See Purcell v. Doherty*, 102 Misc.2d 1049, 424 N.Y.S.2d 991 (1980), *aff'd* 80 A.D.2d 755, 437 N.Y.S.2d 993 (N.Y.A.D. 1 Dept. 1981).

Allowing the non-settling defendant to choose either the *pro rata* or the *pro tanto* method of reduction would solve two significant problems. First, giving the non-settling defendant the choice as to the method of reduction would eliminate any possibility of collusive settlements. With the non-settling defendant having an option, any attempt at collusion would be futile because the settling parties would not know which method would be chosen, thereby making it impossible for them to be

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[26] N.Y. Gen Oblig §15-108 provides in pertinent part:
(a) Effect of release of or covenant not to sue tortfeasors. When a release or a covenant not to sue or not to enforce a judgment is given to one of two or more persons liable or claimed to be liable in tort for the same injury, or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms expressly so provide, but it reduces the claim of the releasor against the other tortfeasors to the extent of any amount stipulated by the release or covenant, or in the amount of the consideration paid for it, or in the amount of the released tortfeasor's equitable share of the damages under article fourteen of the civil practice law and rules, whichever is the greatest.

certain that their settlement would achieve its desired result.

The second problem which the alternative method would solve is the inherent unfairness that can result when a non-settling defendant is forced to live with the results of a settlement to which it was not a party. For example, under the *pro tanto* approach, if the plaintiff settles for a nominal amount with a defendant that would have had substantial fault, the non-settling defendant is effectively forced to bear the burden of the plaintiff's "bad settlement," because it can be condemned to pay the damages necessary to make the plaintiff whole even though its relative culpability is substantially smaller than that of the settling defendant. Likewise, under the *pro rata* approach when the plaintiff settles with a defendant who would otherwise bear primary responsibility, the dynamics of the trial operate to make it likely that the non-settling defendant will be assessed greater fault than it should bear. Allowing the non-settling defendant to choose the credit method is justified, because he is not a party to the settlement, and it should not operate to his detriment.

The alternative approach solves this problem by allowing the non-settling defendant to evaluate its culpability relative to that of the settling defendant, as well as the relationship of the settlement amount to the overall value of the case and to choose a method of reduction. In so doing, rather than being forced to live with the plaintiff's bargain, the defendant is allowed to make a reasoned assessment of the impact of the settlement and to choose what it believes will be the most advantageous form of reduction from its perspective. The approach is

more equitable, because it allows the non-settling defendant to control its own destiny by making a reasoned assessment of the relative risks and benefits of using either the *pro rata* or *pro tanto* approach.

Adoption of this proposal by the Court would allow plaintiffs to settle with less than all joint tort-feasors but allow non-settling defendants to evaluate their relative culpability, as well as the strength of the evidence tending to establish the settling defendant's fault, and either choose the method of reduction or enter into a fair settlement.

CONCLUSION

This Court should affirm the decision of the United States Court of Appeals for the Fifth Circuit and adopt the dollar-for-dollar credit in cases governed by the general maritime law. It is the only method of reduction which remains true to both the principles of joint liability – by insuring that the plaintiff recovers the full amount of his judicially determined damages – as well as the principles of comparative fault – which govern the allocation of liability among the parties participating at trial.

The *pro tanto* method encourages settlement, promotes judicial economy, prevents double or insufficient recovery, and avoids the inefficiency, confusion and collusion associated with the *pro rata* or proportionate method of reduction advocated by petitioner.

Alternatively, this Court should fashion a rule which allows the non-settling defendant to choose the credit

method, as this will alleviate much of the unfairness posed by either method of reduction.

Wherefore, respondent, River Don Casting, Ltd., prays that this honorable Court affirm the decision of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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